

OLL 83-1859
4 August 1983

MEMORANDUM FOR: Deputy Director of Central Intelligence

STAT FROM:
Deputy Director, Office of Legislative Liaison

SUBJECT: Enrolled Bill S.272

Attached for your signature is a letter stating CIA's views on Enrolled Bill S.272, which is presently on the President's desk. The letter indicates our satisfaction with the exemption from the notice provisions of the Act for procurements of a classified nature but identifies general concern over the non-delegable sole source approval requirements. The letter states that the Agency has no objections to Presidential approval of the legislation.

STAT

Attachment

Distribution:

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LEG:ROD:csh (5 August 1983)

Central Intelligence Agency



Washington, D.C. 20505

83-3953

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for the views of the Central Intelligence Agency on Enrolled Bill S.272, an act to improve small business access to Federal procurement information. The Act continues the requirement that Federal agencies publish notice of procurements above stated dollar thresholds, with ten enumerated exemptions. The Act adds the new requirements that Federal agencies wait a specified time interval after publication of a notice of procurement before awarding the contract and that sole source contracts above a stated dollar threshold be approved by the head of the procuring activity or his deputy. I have no objection to Presidential approval of the legislation.

Concerning the impact of this legislation on the Central Intelligence Agency, the Act retains existing law exempting classified procurements from the requirement of publishing procurement notices in the Commerce Business Daily. Consequently, this Act assures that this notice requirement will not interfere with the mission of the Central Intelligence Agency.

I do wish to express concern, however, about the requirement that any sole source contract over a specified threshold amount must be approved by the head of the procuring activity or his deputy, on a non-delegable basis. The fact that this approval requirement is non-delegable could act to impede the efficient administration of procurement activities throughout the federal government, especially as the threshold for requiring this approval is successively reduced to the \$300,000 threshold in fiscal year 1986. I believe this aspect of the Act forebodes an undesirable trend.

We appreciate very much the opportunity to comment on this legislation.

Sincerely,

/s/ John N. McMahon

John N. McMahon
Deputy Director of Central Intelligence



Important--Enrolled Bill

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D. C. 20503

8/2/83

ENROLLED BILL REQUEST

83-06506

In accordance with OMB Circular No. A-19, your written views and recommendation for Presidential action are requested on the following enrolled bill(s) (facsimile(s) attached):

S.272

Please consult section 10 of OMB Circular A-19, pages 12-14, for instructions regarding the preparation of enrolled bill letters and the procedures to be followed on enrolled bills.

Yc Approved For Release 2008/11/20 : CIA-RDP86B00338R000200240013-2
to provide maximum time for Presidential action on
the enrolled bill(s).

James M. Frey
Assistant Director for
Legislative Reference

STAT

ATTENTION:

CIA

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D. C. 20503

8/2/83

General Counsel

43-06506

ENROLLED BILL REQUEST

In accordance with OMB Circular No. A-19, your written views and recommendation for Presidential action are requested on the following enrolled bill(s) (facsimile(s) attached):

S.272

Please consult section 10 of OMB Circular A-19, pages 12-14, for instructions regarding the preparation of enrolled bill letters and the procedures to be followed on enrolled bills.

Within **TWO DAYS** (including holidays but excluding Sundays) after receipt of this request, your reply (original and one copy) should be delivered **VIA SPECIAL MESSENGER** to Mrs. Julia Yuille, Room 7201, New Executive Office Building.

Your cooperation in meeting this deadline is needed to provide maximum time for Presidential action on the enrolled bill(s).

James M. Frey
Assistant Director for
Legislative Reference

ATTENTION:

CIA

STAT

Ninety-eighth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Monday, the third day of January,
one thousand nine hundred and eighty-three*

An Act

To improve small business access to Federal procurement information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 8(e) of the Small Business Act is amended to read as follows:

“(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as ‘department’) engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department’s need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

“(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

“(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the Commerce Business Daily, except if the solicitation is for procurement of requirements categorized as research or

S. 272—2

development effort, in which case until at least thirty days have elapsed from the date of such publication;

“(B) foreclosure competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

“(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

“(3) Whenever notice is required by paragraph (1), such notice shall include—

“(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

“(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

“(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

“(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act or unless a Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with, a Federal department may not commence negotiations for the award of a sole source contract or a contract that results from an unsolicited proposal for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

“(A) the head of the procuring activity or his deputy, on a nondelegable basis, has approved the authority to enter into such contract, and

“(B) the contracting officer for such contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information. Annually, each department shall report to the Congress on each negotiation above the stated amount if the head of the procuring activity or his deputy did not approve the authority to enter into such contract.

“(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall

S. 272—3

promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the Commerce Business Daily.

“(6) As used in this subsection—

“(A) the term ‘sole source contract’ means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

“(B) the term ‘unsolicited proposal’ means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States Government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the department).”.

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*